

Hon. Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

DEMOND LAVELLE BABB, a single
person,

Plaintiff,

vs.

CITY OF TACOMA, a Washington
Municipal Corporation; "JOHN DOES 1-2"
and "JANE DOES 1-2", husbands and wives;
CITY OF FIFE, a Washington Municipal
Corporation; "JOHN DOES 3-7" and "JANE
DOES 3-7", husbands and wives; SOUTH
CORRECTIONAL ENTITY, a Washington
Municipal Corporation; and "JOHN DOES
8-15" and "JANE DOES 8-15", husbands and
wives,

Defendants.

No. 3:18-cv-05215-RJB-DWC

SOUTH CORRECTIONAL ENTITY
DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES

Comes now defendants South Correctional Entity, John Does 8-15, and Jane Does 8-15 (hereinafter "SCORE"), through its attorneys, and in answer to plaintiff's complaint admits, denies, and alleges as follows.

I. PARTIES, JURISDICTION, AND VENUE

1.1 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 1.1 of plaintiff's complaint and therefore deny the same.

1 1.2 Defendants SCORE are without knowledge of the truth or falsity of the
2 allegations contained in paragraphs 1.2 of plaintiff's complaint and therefore deny the same.

3 1.3 The allegations contained in paragraph 1.3 of plaintiff's complaint are not
4 directed to Defendants SCORE, and therefore, Defendants SCORE make no answer thereto.

5 1.4 Defendants SCORE are without knowledge of the truth or falsity of the
6 allegations contained in paragraphs 1.4 of plaintiff's complaint and therefore deny the same.

7 1.5 The allegations contained in paragraph 1.5 of plaintiff's complaint make no
8 allegations directed to Defendants SCORE, and therefore, Defendants SCORE make no answer
9 thereto.

10 1.6 Defendants SCORE are without knowledge of the truth or falsity of the
11 allegations contained in paragraphs 1.6 of plaintiff's complaint and therefore deny the same.

12 1.7 Defendant SCORE admits it is a Washington Municipal Corporation.
13 Defendants SCORE deny the remainder of the allegations on the basis that they call for a legal
14 conclusion and reference a written agreement that speaks for itself.

15 1.8 Defendants SCORE deny the allegations contained in paragraph 1.8 of
16 plaintiff's complaint.

17 1.9 Defendants SCORE are without knowledge of the truth or falsity of the
18 allegations contained in paragraphs 1.9 of plaintiff's complaint and therefore deny the same.

19 1.10 Defendants SCORE are without knowledge of the truth or falsity of the
20 allegations contained in paragraphs 1.10 of plaintiff's complaint and therefore deny the same.

21 1.11 Defendants SCORE deny the allegations contained in paragraph 1.11 of
22 plaintiff's complaint as conclusions of law.

23 1.12 Defendants SCORE deny the allegations contained in paragraph 1.12 of
24 plaintiff's complaint as conclusions of law.
25

II. FACTS

2.1 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.1 of plaintiff's complaint and therefore deny the same.

2.2 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.2 of plaintiff's complaint and therefore deny the same.

2.3 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.3 of plaintiff's complaint and therefore deny the same.

2.4 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.4 of plaintiff's complaint and therefore deny the same.

2.5 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.5 of plaintiff's complaint and therefore deny the same.

2.6 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.6 of plaintiff's complaint and therefore deny the same.

2.7 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.7 of plaintiff's complaint and therefore deny the same.

2.7(sic) Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.7(sic) of plaintiff's complaint and therefore deny the same.

2.8 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.8 of plaintiff's complaint and therefore deny the same.

2.9 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.9 of plaintiff's complaint and therefore deny the same.

2.10 Defendants SCORE are without knowledge of the truth or falsity of the allegations contained in paragraphs 2.10 of plaintiff's complaint and therefore deny the same.

1 2.11 Defendants SCORE are without knowledge of the truth or falsity of the
2 allegations contained in paragraphs 2.11 of plaintiff's complaint and therefore deny the same.

3 2.12 Defendants SCORE admit plaintiff was transported from the Fife Jail to SCORE
4 where he was booked into the facility. Defendants SCORE are without knowledge of the truth
5 or falsity of the remaining allegations related to the existence of Plaintiff's backpack and
6 medications, but have no record of receiving plaintiff's backpack or medications upon his
7 booking, and therefore deny the same.

8 2.13 Defendants SCORE admit the plaintiff underwent a medical intake screening
9 during which the plaintiff reported having a seizure disorder. Plaintiff identified a previous
10 medical provider. Defendants SCORE deny the remaining allegations contained in paragraph
11 2.13 of plaintiff's complaint.

12 2.14 Defendants SCORE admit the plaintiff was assigned to housing with video
13 monitoring and a call button, as all cells at SCORE have video monitoring and a call button.
14 Defendants SCORE deny the remainder of the allegations in paragraph 2.14 of plaintiff's
15 complaint.

16 2.15 Defendants SCORE admit plaintiff was housed in a cell monitored by video
17 camera. Defendants SCORE deny plaintiff's allegations related to the video on the basis that
18 any video recording of plaintiff's cell speaks for itself. Defendants SCORE further deny the
19 remainder of plaintiff's allegations contained in paragraph 2.15 of plaintiff's complaint.

20 2.16 Defendants SCORE admit plaintiff was in custody from 20:52 on December 25,
21 2014 to 20:32 on December 30, 2014. Defendants SCORE deny the remaining allegations
22 within paragraph 2.16 of plaintiff's complaint.

23 2.17 Defendants SCORE are without knowledge of the truth or falsity of the
24 allegations contained in paragraphs 2.17 of plaintiff's complaint and therefore deny the same.
25

1 2.18 Defendants SCORE are without knowledge of the truth or falsity of the
2 allegations contained in paragraphs 2.18 of plaintiff's complaint and therefore deny the same.

3 2.19 Defendants SCORE are without knowledge of the truth or falsity of the
4 allegations contained in paragraphs 2.19 of plaintiff's complaint and therefore denies the same.

5 2.20 Defendant SCORE is without knowledge of the truth or falsity of the allegations
6 contained in paragraphs 2.20 of plaintiff's complaint and therefore denies the same.

7 2.21 Defendant SCORE denies the allegations contained in paragraph 2.21 of
8 plaintiff's complaint.

9 **III. FIRST CAUSE OF ACTION – Tort of Outrage**

10 **City of Tacoma and "John Does 1-2"**

11 3.1 Defendants SCORE incorporate its response to paragraphs 1.1-2.21(sic) as
12 though fully set forth herein.

13 3.2 The allegations contained in paragraph 3.2 of plaintiff's complaint make no
14 allegations directed to Defendants SCORE, and therefore, a response is not required from
15 Defendants SCORE.

16 3.3 The allegations contained in paragraph 3.3 of plaintiff's complaint make no
17 allegations directed to Defendants SCORE, and therefore, a response is not required from
18 Defendants SCORE.

19 3.4 The allegations contained in paragraph 3.4 of plaintiff's complaint make no
20 allegations directed to Defendants SCORE, and therefore, a response is not required from
21 Defendants SCORE.

22 **IV. SECOND CAUSE OF ACTION-Negligent Infliction of Emotional Distress**

23 **CITY OF TACOMA AND "JOHN DOES 1-2"**

4.1 Defendants SCORE incorporate its response to paragraphs 1.1-2.21(sic) as though fully set forth herein.

4.2 The allegations contained in paragraph 4.2 of plaintiff's complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE.

4.3 The allegations contained in paragraph 4.3 of plaintiff's complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE.

V. THIRD CAUSE OF ACTION-Tort of Outrage
CITY OF FIFE, "JOHN DOES 3-7" and CITY OF TACOMA

5.1 Defendants SCORE incorporates its response to paragraphs 1.1-2.21(sic) as though fully set forth herein.

5.2 The allegations contained in paragraph 5.2 of plaintiff's complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE.

5.3 The allegations contained in paragraph 5.3 of plaintiff's complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE.

5.4 The allegations contained in paragraph 5.4 of plaintiff's complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE.

5.5 The allegations contained in paragraph 5.5 of plaintiff's complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE.

VI. FOURTH CAUSE OF ACTION—Negligent Infliction of Emotional Distress

“JOHN DOES 3-7”, CITY OF FIFE and CITY OF TACOMA

6.1 Defendants SCORE incorporates its response to paragraphs 1.1-2.21(sic) as though fully set forth herein.

6.2 The allegations contained in paragraph 6.3 of plaintiff’s complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE.

6.4 The allegations contained in paragraph 6.4 of plaintiff’s complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE.

VII. FIFTH CAUSE OF ACTION—Tort of Outrage

“JOHN DOES 8-15”; SOUTH CORRECTIONAL ENTITY and CITY OF TACOMA

7.1 Defendants SCORE incorporates its response to paragraphs 1.1-2.21(sic) as though fully set forth herein.

7.2 Defendants SCORE deny the allegations contained in paragraph 7.2 of plaintiff’s complaint.

7.3 Defendants SCORE deny the allegations contained in paragraph 7.3 of plaintiff’s complaint.

7.4 Defendants SCORE denies the allegations contained in paragraph 7.4 of plaintiff’s complaint.

7.5 The allegations contained in paragraph 7.5 of plaintiff’s complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendants SCORE. To the extent a response is required, Defendants SCORE deny the same.

**VIII. SIXTH CAUSE OF ACTION—Negligent Infliction of Emotional Distress
“JOHN DOES 8-15”; SOUTH CORRECTIONAL ENTITY and CITY OF TACOMA**

8.1 Defendants SCORE incorporate its response to paragraphs 1.1-2.21(sic) as though fully set forth herein.

8.2 Defendants SCORE deny the allegations contained in paragraph 8.2 of plaintiff's complaint.

8.3 The allegations contained in paragraph 8.3 of plaintiff's complaint make no allegations directed to Defendants SCORE, and therefore, a response is not required from Defendant SCORE. To the extent a response is required, Defendants SCORE deny the same.

8.4 The allegations contained in paragraph 8.4 of plaintiff's complaint make no allegations directed to Defendant SCORE, and therefore, a response is not required from Defendant SCORE. To the extent a response is required, Defendants SCORE deny the same.

IX. SEVENTH CAUSE OF ACTION—Violation of Rights under the Eighth Amendment, 42 USC §1983

“JOHN DOES 8-15”

9.1 Defendants SCORE incorporates its response to paragraphs 1.1-2.21(sic) as though fully set forth herein.

9.2 Defendants SCORE deny the allegations contained in paragraph 9.2 of plaintiff's complaint.

X. PRAYER FOR RELIEF

Answering plaintiff's Prayer for Relief, and all subparagraphs contained therein, Defendants SCORE deny plaintiff is entitled to relief of any kind.

XI. AFFIRMATIVE DEFENSES

By way of FURTHER ANSWER and AFFIRMATIVE DEFENSES, Defendants SCORE allege:

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. The qualified immunity precludes plaintiff's claims.
3. The public duty doctrine precludes plaintiff's claims.
4. Plaintiff's claimed injuries and damages, if any, were caused in whole or in part by plaintiff's own negligence and/or fault.
5. Plaintiff's claimed injuries and damages, if any, were caused in whole or in part by persons or entities over whom defendant had no right of control.
6. Plaintiff failed to mitigate his damages, if any.
7. Plaintiff's claims are barred by the applicable statute of limitations.
8. Defendant SCORE cannot be held liable under Plaintiff's 42 USC §1983 claim solely on a respondeat superior theory.
9. Plaintiff's claims are barred by Plaintiff's failure to comply with RCW 4.96.020.

XII. RESERVATION OF RIGHTS

Defendant reserves the right to plead further answer, affirmative defenses, counterclaims, and/or third-party claims as investigation and discovery may warrant.

XIII. PRAYER FOR RELIEF

WHEREFORE, having answered plaintiff's complaint, defendants pray for relief as follows:

1. That plaintiff's Complaint be dismissed with prejudice and that plaintiff takes nothing thereby;
2. That defendants be awarded judgment on its costs and attorneys' fees incurred in the defense of this action; and
3. For such other and further relief as this Court deems just and equitable.

DATED this 2nd day of May, 2018.

LEE SMART, P.S., INC.

By: 

Craig L. McIvor, WSBA No. 12745
Aaron P. Gilligan, WSBA No. 29614
Of Attorneys for Defendants
South Correctional Entity, John Does 8-15
and Jane Does 8-15

CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on the date shown below a copy of the foregoing was served via ECR on the following counsel of record:

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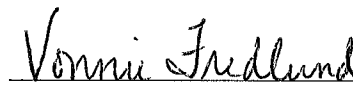
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DATED this 2nd day of May, 2018.



Vonnice Fredlund